NO. 88-1102

Supreme Court, U.S.
FILED
DEC 30 1988
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

WESTMINSTER MANAGEMENT CORPORATION, ET ALS,
Petitioners,

v.

PAUL C. MITCHELL, JR., DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS, AND ATTORNEY GENERAL WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

APPENDIX

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APPENDIX A

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 87-3697 DIVISION " " DOCKET NO.

WESTMINSTER MANAGEMENT CORPORATION, LePAVILLON HOTEL, JERRY C. BILBE, SHEILA B. BELLARIE, KATHLEEN M. BILBE AND MARY D. BILBE, STEDMAN MANAGEMENT COMPANY, INC., REGENT YORK INCORPORATED, NEW ORLEANS DIAMOND AND JEWELRY WHOLESALERS, INC., TURNGEMEINDE PARTNERSHIP IN COMMENDAM, HARTWIG MOSS INSURANCE AGENCY, LTD., W. R. ZANES & CO. OF LA., INC., BERNOS INVESTMENT CORPORATION, SIX-O-ONE JULIA CORPORATION, T. D. BICKHAM CORPORATION, AITKENS REALTY CO., INC., COMMODORE THOMAS J. LUPO ENTERPRISES, NEW ORLEANS RIVERCENTER, INTERNATIONAL RIVERCENTER, GARON AND BRENER, JOHN C. LOVELL, JR., CHARLES A. KRONLAGE, JR., J. A. HOERNER CO., INC., JAMES M. BER, DELTA THEATRES, INCORPORATED, THOMAS D. CHURCH, NATIONAL MEAT ANS PROVISION CO., A. T. GREEN, JR., ODECO BUILDING CORP., 210 BARONNE STREET LIMITED PARTNERSHIP, LINCOLN PROPERTY COMPANY C.S.E., INC., CANARLES REALTY CORP., KILLIAN L. HUGER, JR., DIXIE ART SUPPLIES, INC., PLACE ST. CHARLES, A LOUISIANA PARTNERSHIP, THE GRAND LODGE OF THE STATE OF LOUISIANA, JOSEPH C. CANIZARO INTERESTS, CLIFF PROBST, INC., EBEN T. WATKINS and FNBC, TRUSTEE

VERSUS

PAUL C. MITCHELL, JR.,
DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

PETITION FOR REFUND OF TAXES PAID UNDER PROTEST

The petition of those persons, real or juridical, identified as Plaintiff in the caption, and further identified as Plaintiff and having the requisite capacity to sure as shown on Exhibit "A" attached to this petition and made a part hereof as if same were recited herein *in extenso,* respectfully represents that:

1.

Defendant is the Director of Finance of the City of New Orleans and is the officer designated by law for the collection of ad valorem real estate taxes (the "Real Property Tax(es)") in the City of New Orleans for the year 1987. Defendant Mitchell is officially domiciled in the Parish of Orleans and is the sole necessary and proper party defendant in this suit pursuant to La. R. S. 47:2110B.

2.

Each Plaintiff is or represents the owner of real property located in the First Municipal Assessment District (the "First District") in the City of New Orleans (all references to the City of New Orleans shall include references to the Parish of Orleans, the city and parochial geographic boundaries of same being entirely coterminous).

3.

Each Plaintiff herein paid under protest to Defendant on the date set forth on Exhibit "A" opposite his

name, the amount in U.S. dollars shown opposite his name for the 1987 City of New Orleans Real Property Taxes on real property resulting from an assessment against said real property owned by each Plaintiff and located in the First District in the City of New Orleans, as more particularly identified by the tax bill number shown opposite his name, on Exhibit "A" hereto.

4.

Each Plaintiff paid under protest his Real Property Taxes on the date set forth on Exhibit "A" opposite his name, and at the same time each Plaintiff delivered to Defendant a notice of protest and of his intention to file suit for refund of the Real Property Taxes paid under protest.

5.

This suit is being filed within thirty (30) days of the aforesaid remittances under protest, and, therefore, the defendant must continue to hold the protested payments in escrow pending the outcome of this suit.

6.

At the time each Plaintiff paid his Real Property Taxes, they were due but not delinquent.

7.

Defendant is indebted to each Plaintiff for the refund of the Real Property Taxes that were paid under protest plus interest on the amount of each said refund at the rate of two (2%) percent per annum from the date of payment until refunded in full for the reasons hereinafter set forth.

8.

Each Plaintiff claims refund for the Real Property Taxes on real property located in the First District of the City of New Orleans pursuant ot La. R.S. 47:2110.

9.

The Louisiana Constitution of 1974 in Article VII, Section 18(A) requires real property subject to the Real Property Tax to be listed on the tax rolls at its assessed valuation, which valuation is a percentage of its fair market value. Said provision of the Louisiana Constitution mandates that the percentaage of fair market value listed on the tax rolls is to be uniform throughout the State upon the same class of property. The Louisiana Constitution of 1974, further provides, in Article VII, Section 18 (B), the classifications of property subject to the Real Property Tax and the percentage of fair market value applicable to each classification for the purpose of determining assessed valuation: land and residential property 10% of fair market value, all other property 15% of fair market value.

10.

As set forth in La. R.S. 47:1901, the City of New Orleans is divided into seven (7) assessorial districts (the "Assessment Districts") with an elected assessor (the "Assessor") for each Assessment District. Each of the Assessors is empowered by La. R.S. 47:1909 to assess and list the property on the tax rolls in and for his or her respective Assessment District.

11.

In assessing the property in and for each Assess-

ment District, the various Assessors are required by La. R.S. 47:2323B to determine the fair market value of such property by following the uniform guidelines, procedures and rules and regulations which have been promulgated by the Louisiana Tax Commission. Such criteria for determining fair market value are required by La. R.S. 47:2323A to be applied uniformly throughout the State. Additionally, the Assessors are required by La. R.S. 1957B to list and assess all property subject to taxation at the proper percentage of its fair market value as required by the Louisiana Constitution of 1974.

12.

Upon the proper determination of the assessed valuation of property subject to the Real Property Tax, said valuation is multiplied by the applicable millage rate set by law in effect for the particular taxing jurisdiction in order to compute the actual amount of the Real Property Taxes due on the property in question for a given tax year.

13.

Pursuant to Article VII, Section 18(F) of the Louisiana Constitution of 1974 and La. R.S. 47:2331, the taxable year 1986 is designated a quadrennial reappraisal year and all real property subject to the Real Property Tax located in the City of New Orleans was required to be reappraised in 1986 to determine its fair market value for purposes of computing the assessed valuations of such property.

14.

Each of the Assessors was required to reappraise all the real property in and for their respective Assessment

Districts in 1986, using uniform guidelines, procedures and rules and regulations promulgated by the Louisiana Tax Commission.

15.

Plaintiffs allege on information and belief, that the Louisiana Tax Commission failed, prior to or in connection with the 1986 quadrennial reappraisal, to provide implementation, supervision and enforcement of adequate guidelines, procedures and rules and regulations to enable the Assessors to uniformly determine the fair market value of the various classifications of real property subject to the Real Property Tax. As a consequence of such failure(s) by the Louisiana Tax Commission, or in direct violation of such guidelines, the various Assessors were unable or failed to properly reappraise, in 1986, the real property located in their respective Assessment Districts in the manner required by law.

16.

Plaintiffs allege on information and belief, that the Louisiana Tax Commission failed, in connection with the 1986 quadrennial reappraisal, to provide technical assistance to the Assessors for some or all of the Assessment Districts to ensure accurate reappraisals of the real property in some or all of the Assessment Districts, as required by La. R.S. 47:1837B.(2)(d). As a consequence of such failure by the Louisiana Tax Commission, the various Assessors for some or all of the Assessment Districts were unable or failed to properly reappraise, in 1986, the real property located in their respective Assessment Districts in the manner required by law.

17.

In any event, in 1986, the Assessor for the First District, Mr. Kenneth Carter, generally applying recognized appraisal procedures with reasonable uniformity, reappraised all of the major office buildings located in the Central Business District. A substantial portion of the remaining real property in and for his Assessment District was reappraised by Mr. Carter with the assistance of the Louisiana Tax Commission. Plaintiffs allege on information and belief that the Assessors for some or all of the other Assessment Districts failed to request the assistance of the Louisiana Tax Commission to aid in the reappraisal of the real property in and for their respective Assessment Districts. The Assessors for some or all of the other Assessment Districts failed to apply generally recognized appraisal procedures on uniform basis and systematically and intentionally undervalued the real property in and for their respective Assessment Districts.

18.

As a direct result of the systematic and intentional failure of some or all of the Assessors for the Second, Third, Fourth, Fifth, Sixth and Seventh Municipal Assessment Districts, to apply the proper appraisal procedures uniformly in order to determine the fair market value of real property in and for their respective Assessment Districts, a complete lack of uniformity resulted between the assessed valuations of the real property in the First District in relation to the assessed valuations of the real property in and for some or all of the other Assessment Districts, and a complete lack of uniformity resulted among the other Assessment Districts themselves.

19.

The systematic undervaluation of real property by some or all of the Assessors, other than the First District Assessor, has resulted in a lack of uniformity in the percentage of fair market value listed on the tax rolls for real property of a similar class located within the City of New Orleans and a deviation from the percentage of fair market value of real property required to be listed on the tax rolls.

20.

As a result of the quadrennial reappraisal made in 1986, the total amount of assessments increased in the City of New Orleans, and, pursuant to the provisions of Article VII, Section 23(B) of the Louisiana Constitution, the millage rates levied by each Property Tax recipient body in the City of New Orleans for 1987 were required to be reduced (the "Rollback Adjustment") so that the total Real Property Taxes for 1987 would not exceed the total Real Property Taxes for 1986.

21.

Article VII, Section 23(C) of the Louisiana Constitution and La. R.S. 9:1705 provides a mechanism for the Property Tax recipient bodies to thereafter increase the millage rates for 1987 to the millage rates in effect in 1986 (the "Rollforward Adjustment").

22.

Plaintiffs allege that the City Council of the City of New Orleans, the Orleans Parish School Board and the Board of Commissioners of the Orleans Parish Levee Board, as the taxing authorities for all of the millages

levied and comprising the 1987 Real Property Tax, in adopting millages for 1987, failed to comply with Acts 1981, No. 433 and Acts 1981, Ex. Sess. No. 28, and, as a result, the maximum millage for 1987, cannot exceed the Rollback Adjustment which has yet to be established as required by law.

23.

Plaintiffs further allege that the City Council of the City of New Orleans, the Orleans Parish School Board and the Board of Commissioners of the Orleans Parish Levee Board, in adopting millages for 1983 following a quadrennial reappraisal in 1982, failed to comply with Acts 1981, No. 433, and Acts 1981, Ex. Sess. No. 28, and, as a result, the maximum millages for 1983 could not exceed the Rollback Adjustment which has yet to be established as required by law.

FIRST CAUSE OF ACTION

24.

The complete lack of uniformity between assessed valuations of real property in the First District in relation to assessed valuations of real property in the other Assessment Districts is in purposeful disregard of the mandate of Article VII, Section 18(A) of the Louisiana Constitution of 1974.

25.

As a result of the foregoing, the assessments on real property in the City of New Orleans and, in particular, the assessments of Plaintiffs are invalid, unenforceable and without force and effect.

26.

As a consequence of the foregoing, there is no lawful or legal basis upon which to levy Real Property Taxes against Plaintiffs' respective properties.

SECOND CAUSE OF ACTION

27.

The systematic and purposeful undervaluation of real property in and for the City of New Orleans in all or most of the Assessment Districts but the First District results in an illegal and unlawful deviation from the percentage of fair market value of such property required to be listed on the tax rolls by Article VII, Section 18(B) of the Louisiana Constitution of 1974 and La. R.S. 47:1957B.

28.

As a result of the foregoing, the assessments on real property in the City of New Orleans and in particular, the assessments of Plaintiffs are invalid, unenforceable and without force and effect and there is no basis upon which to levy Real Property Taxes againsts Plaintiffs' respective properties.

THIRD CAUSE OF ACTION

29.

The amount of Real Property Taxes claimed due by Defendant from Plaintiffs for taxable year 1987 is a direct consequence of the systematic undervaluation of the real property in and for the City of New Orleans in all or most of the Assessment Districts other than the First District.

30.

The substantive effect of this purposeful discrimination by the Assessors for all or most of the Assessment Districts is that Plaintiffs' real property located in the First District is illegally burdened with Real Property Taxes in excess of the amount of Real Property Taxes which the law requires their real property to bear.

31.

This unequal taxation of Plaintiffs' real property and intentional deviation from the uniformity requirements of the Louisiana Constitution of 1974 and statutes thereunder result in an illegal disparity of taxation between individuals and businesses in the First District and similarly situated individuals and businesses in the other Assessment Districts in contravention of Plaintiffs' right to equal protection of the laws guaranteed by Article I, Section 3 of the Louisiana Constitution of 1974.

32.

As a result of the foregoing, the assessments of Plaintiffs are invalid, unenforceable and of no force and effect.

33.

As a consequence of the foregoing, there is no lawful or legal basis upon which to levy Real Property Taxes against Plaintiffs' respective properties.

FOURTH CAUSE OF ACTION

34.

The unequal taxation of Plaintiffs' real property and intentional deviation from the uniformity requirements of the Louisiana Constitution of 1974 and statutes thereunder result in an illegal disparity of taxation between individuals and businesses in the First District and similarly situated individuals and businesses in the other Assessment Districts in contravention of the Equal Protection and Due Process Clauses of the United States Constitution applied to the state of Louisiana through the Fourteenth Amendment of the United States Constitution.

35.

As a result of the foregoing, the assessments of Plaintiffs are invalid, unenforceable and of no force and effect.

36.

As a consequence of the foregoing, there is no lawful or legal basis upon which to levy Real Property Taxes against Plaintiffs' respective properties.

FIFTH CAUSE OF ACTION

37.

As a result of Plaintiffs' allegations in Paragraphs 20 and 21, taken together, Plaintiffs allege that the maximum millages for 1987 established by the City of New Orleans, the Orleans Parish School Board and the Board of Commissioners of the Orleans Levee Board are improper and

unlawful as being in excess of the maximum millages which may be levied in 1987.

38.

The unlawful millages applied to the assessed valuation of Plaintiffs' real property located in the First District render the Real Property Tax claimed due by Defendant from Plaintiffs excessive and illegal.

WHEREFORE, Plaintiffs pray that after due proceedings be had, there be judgment herein in favor of each Plaintiff and against Defendant, Paul C. Mitchell, Jr., Director of Finance of the City of New Orleans, ordering, adjudging and decreeing that the appraisal procedures and the enforcement thereof by the Assessors of the Second, Third, Fourth, Fifth, Sixth and Seventh Municipal Assessment Districts of the City of New Orleans are unconstitutional in violation of Article VII, Section 18(A), Article VII, Section 18(B) of the Louisiana Constitution of 1974 and Article 1, Section 3 of the Louisiana Constitution of 1974 and in contravention of the Equal Protection and Due Process Clauses of the United States Constitution, that is the Fourteenth Amendment of the Constitution of the United States, and further ordering and directing the refund by Defendant to each Plaintiff of the full amount of the protested payment set forth opposite the name of each Plaintiff on Exhibit "A" or such amount as may be found due together with interest at the rate of two (2%) percent per annum from the date of payment under protest by each plaintiff until paid, plus all costs of these proceedings and for all general and equitabale relief.

/s/ Moise S. Steeg, Jr.

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PLEASE SERVE:

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Director of Finance of the
City of New Orleans
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EXHIBIT "A"

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Westminster Management Corporation	Agent	1/30/87	$72,870.88	R 1-05-1-021-13 1-05-1-021-03 1-05-1-021-06
Westminster Management Corporation	Agent	1/30/87	$32,639.94	1-05-1-017-05
Westminster Management Corporation	Agent	1/30/87	$128,582.37	1-05-1-021-04
Westminster Management Corporation	Agent	1/30/87	$110,667.35	1-05-1-021-01 1-05-1-021-02 1-05-1-021-14 1-05-1-021-19
Westminster Management Corporation	Agent	1/30/87	$ 83,707.13	1-05-1-019-12 1-05-1-019-13 1-05-1-019-15 1-05-1-019-29
Westminster Management Corporation	Agent	1/30/87	$ 25,584.47	1-04-1-024-12 1-04-1-024-14 1-04-1-024-15 1-04-1-024-16

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Westminster Management Corporation	Agent	1/30/87	$676,094.00	1-05-1-020-01 1-05-1-020-02 1-05-1-020-04 1-05-1-020-05 1-05-1-020-06 1-05-1-020-07 1-05-1-020-08 1-05-1-020-09 1-05-1-020-10 1-05-1-020-11 1-05-1-020-12 1-05-1-020-13 1-05-1-020-14 1-05-1-020-15 1-05-1-020-17 1-05-1-020-18 1-05-1-020-19 1-05-1-020-20 1-05-1-020-21
Westminster Management Corporation	Agent	1/30/87	$220,560.34	1-05-1-018-19
Westminster Management Corporation	Agent	1/30/87	$817,794.47	1-04-1-034-03
Westminster Management Corporation	Agent	1/30/87	$720,349.37	1-04-1-034-07

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Westminster Management Corporation	Agent	1/30/87	$746.327.58	1-04-1-035-02
LePavillon Hotel	Agent	1/30/87	$103.498.54	1-04-1-019-01
Jerry C. Bilbe Sheila B. Bellarie Kathleen M. Bilbe Mary D. Bilbe	Owners	1/30/87	$ 13,181.88	1-02-1-018-01 1-04-1-049-04 1-01-1-037-24 1-01-1-040-16 1-05-2-024-27 1-05-2-024-28 1-02-1-028-21 1-02-1-028-22 1-02-1-028-09 1-02-1-028-20 1-02-1-028-07 1-02-1-028-08 1-02-1-028-06 1-02-1-028-04 1-02-1-028-03 1-02-1-028-02 1-01-1-040-14 1-01-1-037-22 1-01-1-026-22 1-01-1-037-01 1-01-1-026-20 1-01-1-026-21

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Stedman Management Company, Inc.	Agent	1/30/87	$ 22,009.87	1-05-1-017-07
Stedman Management Company, Inc.	Agent	1/30/87	$492,325.77	1-05-1-017-09
Regent York Incorporated	Agent	1/30/87	$ 28,918.08	1-03-1-006-06
New Orleans Diamond & Jewelry Wholesalers, Inc.	Owner and/or Agent	1/30/87	$ 4,766.13	1-04-1-011-19
Turngemeinde Partnership in Commendam	Owner	1/30/87	$ 21,675.17	1-03-1-050-14 1-03-1-050-15
Hartwig Moss Insurance Agency, Ltd.	Owner	1/30/87	$ 11,312.86	1-03-1-049-08
W. R. Zanes & Co. of La., Inc.	Owner	1/30/87	$ 5,369.41	1-05-1-007-01
Bernos Investment Corporation	Owner	1/30/87	$ 16,299.90	1-04-1-025-05 1-04-1-025-06 1-04-1-025-17 1-04-1-025-18 1-04-1-025-22

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Six-O-One Julia Corporation	Owner	1/30/87	$ 3.065.85	1-03-1-037-03
T.D. Bickham Corporation	Owner and Agent	1/30/87	$143.246.78	1-05-1-022-08 1-05-1-022-07 1-05-1-022-02
Aitkens Realty Co., Inc.	Owner or Agent	1/30/87	$ 2.583.88	1-03-1-045-05
Aitkens Realty	Owner or Agent	1/30/87	$ 4.980.34	1-03-1-045-06
Commodore Thomas J. Lupo Enterprises	Owner or Agent	1/30/87	$ 25.972.72	1-03-1-034-10
New Orleans Rivercenter	Owner	1/30/87	$156.588.73	1-03-1-001-13
International Rivercenter	Owner	1/30/87	$859.226.31	1-03-1-001-12
Garon and Brener	Owner	1/30/87	$ 8.581.71	1.03-1-048-06
John C. Lovell,Jr.	Agent	1/30/87	$ 4.351.10	1.04-1-007-05
John C. Lovell,Jr.	Agent	1/30/87	$ 4.792.90	1-04-1-007-06
Charles A. Kronlage, Jr.	Owner or Agent	1/30/87	$ 5.971.05	1-03-1-041-06
J. A. Hoerner Co., Inc.	Owner	1/30/87	$ 15.369.42	1-04-1-009-06
James M. Ber	Owner or Agent	1/30/87	$ 946.76	1-05-3-064-24
James M. Ber	Owner or Agent	1/30/87	$ 10.924.20	1-05-3-064-01

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Delta Theatres, Incorporated	Owner	1/30/87	$ 15,503.30	1-05-1-023-01
Thomas C. Church	Agent	1/30/87	$ 34,775.34	1-03-1-010-01
National Meat & Provision Co.	Owner or Agent	1/30/87	$ 1,860.93	1-03-1-030-04
National Meat & Provision Co.	Owner or Agent	1/30/87	$ 2,670.36	1-01-1-052-05 1-01-1-052-07
National Meat & Provision Co.	Owner or Agent	1/30/87	$ 1,456.56	1-01-1-039-14 1-01-1-039-16
National Meat & Provision Co.	Owner or Agent	1/30/87	$ 3,829.54	1-01-1-039-02
A. T. Green, Jr.	Owner	1/30/87	$ 6,760.94	1-03-1-037-15
ODECO Building Corp.	Owner or Agent	1/30/87	$ 1,727.05	1-05-1-036-22
210 Baronne Street Limited Partnership	Owner	1/30/87	$266,004.43	1-05-1-016-02
210 Baronne Street Limited Partnership	Owner	1/30/87	$ 96,167.08	1-05-1-016-09
Lincoln Property Company C.S.E., Inc.	Owner	1/30/87	$873,714.27	1-03-1-059-26
Canarles Realty Corp.	Owner	1/30/87	$ 5,114.22	1-05-1-011-11
Canarles Realty Corp.	Owner	1/30/87	$ 20,845.12	1-05-1-011-15
Killian L. Huger, Jr.	Agent	1/30/87	$ 849.66	1-04-1-048-02
Killian L. Huger, Jr.	Agent	1/30/87	$ 182.07	1-04-1-048-16
Killian L. Huger, Jr.	Agent	1/30/87	$ 5,462.10	1-04-1-048-01
Killian L. Huger, Jr.	Agent	1/30/87	$ 15,235.54	1-04-1-024-03

PLAINTIFF	PROCEDURAL CAPACITY	DATE OF PAYMENT OF TAXES	DOLLAR AMOUNT OF TAXES	TAX BILL NUMBER(S)
Killian L. Huger, Jr.	Agent	1/30/87	$ 736.34	1-04-1-024-01
Killian L. Huger, Jr.	Agent	1/30/87	$ 4,016.40	1-04-1-024-23
Killian L. Huger, Jr.	Agent	1/30/87	$ 4,110.12	1-04-1-024-21
Killian L. Huger, Jr.	Agent	1/30/87	$ 3,855.74	1-04-1-024-22
Killian L. Huger, Jr.	Agent	1/30/87	$ 2,415.56	1-01-1-006-05
Killian L. Huger, Jr.	Agent	1/30/87	$ 72,549.61	1-04-1-023-06
Dixie Art Supplies, Inc.	Owner or Agent	1/30/87	$ 3,855.74	1-04-1-009-04
Dixie Art Supplies, Inc.	Owner or Agent	1/30/87	$ 15,971.88	1-03-1-022-04
Place St. Charles, a La. Partnership	Owner	1/30/87	$1,483,240.47	1-05-1-013-01 1-04-1-015-06 1-04-1-015-07 1-4-1-015-14 1-04-1-015-15
The Grand Lodge of the State of Louisiana	Owner	1/30/87	$ 92,460.00	1-04-1-014-01
Joseph C. Canizaro Interests	Agent	1/30/87	$983,652.65	1-03-1-025-01 1-03-1-027-13
Cliff Probst, Inc.	Agent	1/30/87	$ 13,896.74	1-04-1-026-22
Eben T. Watkins	Owner	12/30/86	$ 3,601.37	1-03-1-038-02
FNBC, Trustee	Trustee	1/30/87	$ 38,798.42	1-04-1-016-08

APPENDIX B

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 87-3697 DIVISION "G" DOCKET NO.4

WESTMINSTER MANAGEMENT CORPORATION, LePAVILLON HOTEL, JERRY C. BILBE, SHEILA B. BELLARIE, KATHLEEN M. BILBE AND MARY D. BILBE, STEDMAN MANAGEMENT COMPANY, INC., REGENT YORK INCORPORATED, NEW ORLEANS DIAMOND AND JEWELRY WHOLESALERS, INC., TURNGEMEINDE PARTNERSHIP IN COMMENDAM, HARTWIG MOSS INSURANCE AGENCY, LTD., W. R. ZANES & CO. OF LA., INC., BERNOS INVESTMENT CORPORATION, SIX-O-ONE JULIA CORPORATION, T. D. BICKHAM CORPORATION, AITKENS REALTY CO., INC., COMMODORE THOMAS J. LUPO ENTERPRISES, NEW ORLEANS RIVERCENTER, INTERNATIONAL RIVERCENTER, GARON AND BRENER, JOHN C. LOVELL, JR., CHARLES A. KRONLAGE, JR., J. A. HOERNER CO., INC., JAMES M. BER, DELTA THEATRES, INCORPORATED, THOMAS D. CHURCH, NATIONAL MEAT AND PROVISION CO., A. T. GREEN, JR., ODECO BUILDING CORP., 210 BARONNE STREET LIMITED PARTNERSHIP, LINCOLN PROPERTY COMPANY C.S.E., INC., CANARLES REALTY CORP., KILLIAN L. HUGER, JR., DIXIE ART SUPPLIES, INC., PLACE ST. CHARLES, A LOUISIANA PARTNERSHIP, THE GRAND LODGE OF THE STATE OF LOUISIANA, JOSEPH C. CANIZARO INTERESTS, CLIFF PROBST, INC., EBEN T. WATKINS and FNBC, TRUSTEE

VERSUS

PAUL C. MITCHELL, JR.,
DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

Consolidated With:

NO. 87-3727 DIVISION "B" DOCKET NO.
PAN-AMERICAN LIFE INSURANCE COMPANY

VERSUS

CITY OF NEW ORLEANS, ET AL

Consolidated With:

NO. 87-3728 DIVISION "C" DOCKET NO.
PANACON, A LOUISIANA PARTNERSHIP

VERSUS

CITY OF NEW ORLEANS, ET AL

Consolidated With:

NO. 87-3898 DIVISION "A" DOCKET NO.
BEVPAC PROPERTIES

VERSUS

PAUL C. MITCHELL, JR.
DIRECTOR OF FINANCE FOR THE CITY OF NEW ORLEANS

FILED: _____ _____
DEPUTY CLERK

SUPPLEMENTAL AND AMENDED PETITION

The Amended Petition of those persons, real or juridical, identified as Plaintiffs in the above caption and fully identified as Plaintiffs on Exhibit A annexed to the original petition herein, seeking to supplement and amend the original petition herein respectfully represent that:

Allegation 1 of the original petition should be amended to read as follows:

The Defendants are as follows:

(a) The Director of Finance of the City of New Orleans and is the officer designated by law for the collection of ad valorem real estate taxes (the "Real property Tax(es)") in the City of New Orleans for the year 1987. Defendant Mitchell is officially domiciled in the Parish of Orleans and is the sole necessary and proper party Defendant in this suit pursuant to La. R.S. 47:2110B.

(b) The Assessors for the City of New Orleans for their respective district, as set forth below:

ASSESSOR	DISTRICT
Kenneth Carter	1
Claude Mauberret, Jr.	2
Errol Williams	3
Ronald G. Burke	4
James W. Smith	5
Janyce C. Degan	6
E. Henry Heaton	7

(c) The Board of Review for real estate ad valorem taxes for the Parish of Orleans, State of Louisiana, consisting of the following:

COUNCIL	DISTRICT
Dorothy Mae Taylor	Councilwoman At Large
Joseph I. Giarrusso	Councilman At Large
Peggy Wilson	A
James Singleton	B
Mike Early	C
Lambert C. Boissiere, Jr.	D
Johnny Jackson, Jr.	E

(d) The Louisiana Tax Commission whose members are as follows:

Jamar W. Adcock
Carol D. Fisher
Betty J. Lowery
James W. Smith
Mark H. Bonner, Jr.

Allegation 3 of the original petition should be amended to read as follows:

The Plaintiffs herein appealled their assessment to the Board of Review. The Board of Review after a hearing decided that "the Board has insufficient data on which to base an evaluation of the ratio of assessments to fair market value in other assessment districts, both within Orleans Parish and in other parishes of Louisiana;" (Exhibit 1 hereto).

Thereafter a timely appeal was made to the Tax Commission. At the hearing before the Tax Commission, the

Tax Commission ruled: "after considering the exhibits filed by the protesters and the arguments and memorandum of the attorneys, the Commission finds that there is an indication that assessments may be unequal between districts. However, the Commission does not find that the weight of the evidence presented establishes inequality of assessment and therefore the decision of the Board of Review is upheld."(Exhibit 2 hereto).

Consistent with the last paragraph of their decision dated October 28, 1986, on May 4, 1987, "the Tax Commission..." ordered "a reappraisal of all property for the 1988 tax year, based upon the fair market value as of 1/1/87." (Exhibit 3 hereto).

Each Plaintiff herein paid under protest to Defendant on the date set forth on Exhibit "A" opposite his name, the amount in U.S. dollars shown opposite his name for the 1987 City of New Orleans Real Property Taxes on real property resulting from an assessment against said real property owned by each Plaintiff and located in the First District in the City of New Orleans, as more particularly identified by the tax bill number shown opposite his name, on Exhibit "A" annexed to the original petition.

The following should be substituted for allegation 14 of the original complaint.

Each of the Assessors was required to reappraise all the real property in and for their respective Assessment Districts in 1986, using uniform guidelines, procedures and rules and regulations promulgated by the Louisiana Tax Commission.

Intentionally and systematically, the seven Assessors of the Assessment Districts for the City of New

Orleans have failed and refuse to apply uniformity and equality among the taxpayers in the City of New Orleans, in violation of the regulatory, statutory, and constitutional provisions herein elsewhere cited.

Plaintiffs allege on information and belief, that the Louisiana Tax Commission failed, prior to or in connection with the 1986 quadrennial reappraisal, to provide implementation, supervision and enforcement of adequate guidelines, procedures and rules and regulations to enable the Assessors to uniformly determine the fair market value of the various classifications of real property subject to the Real Property Tax. As a consequence of such failure(s) by the Louisiana Tax Commission, or in direct violation of such guidelines, the various Assessors were unable or failed to properly reappraise, in 1986, the real property located in their respective Assessment Districts in the manner required by law. There has been a discrepancy in the assessment ratios for the various Parishes of Louisiana and more particularly the Parish of Orleans for several years. The Louisiana Tax Commission is the body charged by law with the duty of equalizing taxes and has had knowledge of the continuous variation between the assessment ratios of the several parishes and of the seven Assessment Districts in the Parish of Orleans, and in spite of this knowledge the Louisiana Tax Commission has failed to take any action to equalize taxes. Failure to act on the part of the Louisiana Tax Commission constitutes purposeful discrimination, which results in systematic lack of equality in payment of taxes; that this lack of equality is not in any way accidental or the result of errors in judgment, but is a failure to discharge the duty of the Tax Commission to equalize taxes.

Allegation 39. The additional Defendants hereto, that is, the Assessors for the Parish of Orleans named

above, the Board of Review for the Parish of Orleans named above, and the Louisiana Tax Commission have failed to perform their statutory obligations to provide, either by assessment, or be review thereof, assessment of the properties in the Parish of Orleans at their actual cash value and fair market value on a uniform and equal basis in compliance with Article VII of the Constitution of the State of Louisiana and the Fourteenth Amendment of the United States Constitution. Accordingly, their actions, or their failure to act, are improper and illegal, and the assessments of Plaintiffs' properties are accordingly null, void and invalid.

Allegation 40. All of the other allegations of Plaintiffs' original petition are repeated herein.

WHEREFORE, the premises considered, Plaintiffs pray that this Supplemental and Amended Petition be filed herein, and that same be served upon Paul C. Mitchell, Jr., the original Defendant herein, in his capacity as the Tax Collector for the City of New Orleans, on the Assessors for the Parish of Orleans named above, on the Board of Review for the Parish of Orleans named above, on the Tax Commission and each of its members named above, and after due proceedings had, there be judgment against all of said Defendants and in favor of Plaintiffs, ordering, adjudging and decreeing that the appraisal procedures and the enforcement thereof by the Assessors of the Second, Third, Fourth, Fifth, Sixth and Seventh Municipal Assessment Districts of the City of New Orleans are unconstitutional in violation of Article VII, Section 18(A), Article VII, Section 18(B) of the Louisiana Constitution of 1974 and Article 1, Section 3 of the Louisiana Constitution of 1974 and in contravention of the Equal Protection and Due Process Clauses of the United States Constitution, that is, the Fourteenth Amendment of the Constitution of the United

States, and further ordering and directing the refund by Defendants to each Plaintiff of the full amount of the protested payment set forth opposite the name of each Plaintiff on Exhibit "A" annexed to the original petition, and all parties plaintiff herein, or such amount as may be found due together with interest at the rate of two (2) percent per annum from the date of payment under protest by each Plaintiff until paid, plus all costs of these proceedings and for all general and equitable relief.

/s/ Moise S. Steeg, Jr.
MOISE S. STEEG, JR.
ROBERT M. STEEG
STEEG AND O'CONNOR
201 ST. CHARLES AVENUE
SUITE 3201
NEW ORLEANS, LOUISIANA 70170
(504) 582-1199

/s/ Mitchel W. Herzog
DONALD A. MEYER
MITCHELL W. HERZOG
SHUSHAN, MEYER, JACKSON,
McPHERSON & HERZOG
1010 COMMON STREET
SUITE 1500
NEW ORLEANS, LOUISIANA 70112
(504) 581-9444

A-30

ORLEANS PARISH BOARD OF REVIEW

No. 7
CITY HALL: September 12, 1986

BY: BOARD MEMBERS TAYLOR, SINGLETON, BELLSON AND BOSSIERE

WHEREAS, the Board of Review has received appeals from a number of property owners in the First Municipal District, in which the property owners allege that their properties are unfairly assessed as compared to similar properties in other assessment districts: and

WHEREAS, the Board has reviewed the assessment precedures and policies employed by the assessor and has received the recommendations of its independant consultants on the properties in question: and

WHEREAS, the Board is convinced that the assessor considered and responded to the problems currently being experienced by Central Business District property owners, including the difficult local economy and the unusual vacancy rate, and has placed assessments on the properties which fairly reflect their fair market value, as defined by State law and Tax Commission policies: and

WHEREAS, the Board has insufficient data on which to base an evaluation of the ratio of assessments to fair market value in other assessment districts, both within Orleans Parish and in the other parishes of Louisiana: and

WHEREAS, the Board appreciates the importance of equal assessment of all properties within the State: and therefore

BE IT RESOLVED BY THE ORLEANS PARISH BOARD OF REVIEW that the Board respectfully requests that the Louisiana Tax Commission pay special attention to the allegations of these property owners when the 1987 tax rolls are reviewed.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: 6

NAYS: 0

ABSENT: 1

AND THE RESOLUTION WAS ADOPTED.

Louisiana Tax Commission

James W. Adoock, Chairman
Carol D. Fisher, Memberr
Betty J. Lewery, Member
James W. Smith, Member
Mark H. Bonner, Jr., Member
Ann R. Lavespara, Executive Secretary

Baton Rouge Office
P. O Box 64788
Baton Rouge, La. 70696
Novemebr 12, 1986

Mr. Mitchell W. Herzog
1010 Common Street - Suite 1500
New Orleans, Louisiana 70112

Re: Appeal of 1987 Assessed Valuation
Westminister Management
Docket No. 86-020
Orleans, Parish - 1st M. D.

Dear Mr. Herzog:

Enclosed herewith is a certified copy of the Commission's decision on the above captioned matter, which was heard in New Orleans on October 28, 1986.

You have the right to appeal this decision to the district court within thirty (30) days of the date of this letter.

Sincerely,

/s/ James W. Smith

James W. Smith
Member

JWS/jkb

EXHIBIT 2
November 17, 1986

LOUISIANA TAX COMMISSION
STATE OF LOUISIANA

IN RE:	:	DOCKET NO. 86-020-1
PROTEST OF	:	TAX BILL REF. NO. 1-05-1-020-20
WESTMINISTER MANAGEMENT CORP.	:	

DECISION

This matter was heard on the 28th day of October, 1986 at New Orleans, Louisiana.

The common issue presented to the Commission by the protesting taxpayers is the alleged inequality of assessment between the First District of Orleans Parish and the remaining six districts. After considering the exhibits filed by the protestors and the arguments and memorandum of the attorneys, the Commission finds that there is an indication that assessments may be unequal between districts. However, the Commission does not find that the weight of the evidence presented establishes inequality of assessment and, therefore, the decision of the Board of Review is upheld.

Although the evidence presented is not conclusive, the Commission will conduct a study as authorized by Louisiana Revised Statutes 47:1837B.

Baton Rouge, Louisiana, this 13th day of November, 1986.

/s/ Carol D. Fisher
CAROL D. FISHER, MEMBER

/s/ Betty J. Lowery
BETTY J. LOWERY, MEMBER

/s/ James W. Smith
JAMES W. SMITH, MEMBER

Louisiana Tax Commission

James W. Adcock, Chairman
Carol D. Fisher, Member
Betty J. Lewery, Member
James W. Smith, Member
Mark H. Bonner, Jr., Member
Ann R. Lavespara, Executive Secretary

Baton Rouge Office
P. O Box 64788
Baton Rouge, La. 70896

May 4, 1987

TO: ALL ASSESSORS

FROM: LOUISIANA TAX COMMISSION

The Tax Commission is ordering a reappraisal of all property for the 1988 tax year, based on Fair Market Value as of 1/1/87.

In previously establishing a valuation date of 1/1/85, for reappraisal in the 1986 tax year (Orleans 1987), the Commission did not anticipate the enormous fluctuations and instability of values caused by the state's economic plight of the last two years. Conversations with assessors and taxpayers, and a composite statewide ratio study, have demonstrated the difficulty of equitably assessing property under the circumstances of 1985-86.

The Commission will provide usual professional and technical assistance of asessors upon request and in accordance with its determination of need as provided by law.

Sincerely,

/s/ James W. Adcock
JAMES W. ADCOCK, CHAIRMAN

/s/ Carol D. Fisher
CAROL D. FISHER, MEMBER

/s/ James W. Smith
JAMES W. SMITH, MEMBER

/s/ Betty J. Lowery
BETTY J. LOWERY, MEMBER

/s/ Mark H. Bonner, Jr.,
MARK H. BONNER, JR.,MEMBER

EXHIBIT 3

APPENDIX C

NO. C-8656
COURT OF APPEAL. FOURTH CIRCUIT
STATE OF LOUISIANA

WESTMINSTER MANAGEMENT CORPORATION, ET AL
VERSUS

PAUL C. MITCHELL, DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

IN RE:	Westminster Management Corporation, et al
APPLYING FOR:	WRITS OF CERTIORARI, PROHIBITION AND MANDAMUS
DIRECTED TO:	HONORABLE STEVEN R. PLOTKIN, JUDGE, CIVIL DISTRICT COURT, PARISH OF ORLEANS, DIVISION "G", NO. 87-3697 C/W 87-3727, 87-3728, 87-3898

WRIT GRANTED

This matter arises out of the relators' payment, under protest, of $9,676,656.81 in 1987 Real Estate Taxes allegedly due to the City of New Orleans and its various taxing authorities (the Levee Board and the School Board). At issue is the correctness of a trial court ruling releasing some $5,730,654.12 of these funds on the theory that this amount was not "in dispute" as that term is used in R.S. 47:2110 and therefore could not be held in escrow

pending the outcome of a trial on the merits of realtors' claim. We disagree and reverse the trial court's ruling.

R.S. 47:2110 (A), as amended in 1986, provides that:

> No court of this state shall issue any process whatsoever to restrain the collection of an ad valorem tax imposed by the state, or by any political subdivision thereof, under authority granted to it by the legislature or by the constitution. Any person resisting the payment of any amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give the officer notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. *If suit is filed within such time for the recovery of the tax, then that portion of the taxes paid that are in dispute shall be deemed as paid under protest and such amount shall be segregated and shall be further held pending the outcome of the suit. That portion of the taxes paid by the taxpayer to the officer which is not in dispute shall not be made subject to the protest.* If the taxpayer prevails, the officer shall refund the amount to the taxpayer with interest at the rate of two percent per annum for the period from the date such funds were received by the officer to the date of such refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes together with interest at the rate of two percent per annum from the date of the notice of intention to file suit for recovery of taxes was given to the officer until the date such taxes are paid. (emphisis added)

Before R.S. 47:2110 was amended, it required that the entire amount of tax assessed be placed in escrow pending resolution of the tax refund suit, even if the petitioner only disputed a portion of the assessed amount. It is clear that the amended version of R.S. 47:2110 was designed to remedy this situation so that, in cases where only a portion of the assessed amount was disputed, the remainder could be released from escrow.

However, the question remains who determines the amount of tax which is "in dispute". Clearly, the answer must be the plaintiff/taxpayer. It is the taxpayer who must file suit to recover taxes alegedly overpaid. The amount of tax "in dispute" is one of the facts the petition must allege. The plaintiff/taxpayer has a right to present evidence in support of his good faith allegations as to how much of his tax bill is disputed and why. The trial court's action in this case denied relators' this fundamental right by, in essence, amending their petition against their will and and reducing the amount of their demand. This denied them the protection which the escrow provisions of R.S. 47:2110 were intended to provide. The City urges, and the trial court apparently agrees, that allowing the plaintiff to fix the amount of tax in dispute frustrates the legislative intent behind the 1986 amendment to R.S. 47:2110. We disagree.

In our opinion, the legislature recognized the plaintiff/taxpayer's fundamental right to set the parameters of his suit by alleging, in good faith, the amount of tax "in dispute". However, the legislature also recognized the potential abuse of this right which could occur if taxpayers exaggerated the disputed amount. Thus, the 1986 amendment to R.S. 47:2110 provided, for the first time, that:

> If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes *together*

> *with interest at the rate of two percent per annum* from the date of the notice of intention to file suit for recovery of taxes was given to the officer until the date such taxes are paid. (emphasis added)

This provision clearly was intended to deter overstatement by the taxpayer of the amount of tax "in dispute". If a claim is exaggerated and cannot be proven at trial, the taxpayer will pay the price for his exaggeration; a two percent charge. This appears to be the legislature's way of striking a fair balance between the right of the taxpayer/plaintiff to allege the facts as he sees them and the desire to make the undisputed part of tax payments available to taxing authorities. We now examine realtor's petition to determine the scope of its allegations.

A fair reading of this pleading leaves no doubt whatsoever that the *entire* amount of property tax paid in 1987 is being dispursed by realtors not just the difference between their 1986 and 1987 tax bills. The suit challenges the validity of the entire assessment process as applied in the City of New Orleans, on both State and Federal constitutional grounds. The petition also alleges statutory deficiencies in the millage adjustment procedures which taxing authorities are constitutionally required to conduct from time to time.

Given the breadth of realtors' allegations, it is difficult to perceive a factural or legal basis for holding that less then the entire amount of taxes paid are "in dispute".

For the foregoing reasons the ruling of the trial court is reversed.

New Orleans, Louisiana this 2nd day of November, 1987.

/s/ WHB
JUDGE WILLIAM H. BYRNES, III

/s/ DAB
JUDGE DENIS A. BARRY

/s/ JBA
JUDGE JOAN BERNARD ARMSTRONG

NOV 2 1987

APPENDIX D

WESTMINSTER MANAGEMENT CORPORATION, et al.,

v.

Paul C. MITCHELL, Jr., Director of Finance of the City of New Orleans.

PAN-AMERICAN LIFE INSURANCE COMPANY

v.

CITY OF NEW ORLEANS, et al.

PANACON, a Louisiana Partnership

v.

CITY OF NEW ORLEANS, et al.

BEVPAC PROPERTIES

v.

Paul C. MITCHELL, JR., Director of Finance for the City of New Orleans.

No. 88-C-0516.

Court of Appeal of Louisiana,
Fourth Circuit.

May 13, 1988.

Rehearing Denied June 3, 1988.

Real property owners sought recovery of ad valorem taxes paid under protest in action against city finance director, alleging their assessments were unequal and not uniform relative to assessments of similar classes of property in adjacent assessment districts and that assessments in other districts were incorrect because they were too low. Finance director moved for summary judgment arguing procedural exceptions. The Civil District Court, Parish of Orleans, James A. Wysocki, J. ad hoc, denied the summary judgment motion. After grant of certiorari to review the district court judgment, the Court of Appeal, Ciaccio, J., held that: (1) statute providing for direct actions within 30 days after payment under protest of tax due applied only to challenges other than those attacking correctness of assessments, as Constitution mandates review procedures for challenges to correctness of assessments, and (2) property owners' complaint was "correctness" challenge to which constitutionally mandated review procedures applied, and accordingly, property owners' complaints had prescribed when constitutionally mandated review procedures were not timely followed.

Judgment in consolidated cases set aside; peremptory exception of prescription maintained; suits dismissed.

Okla Jones II, City Atty., Jackson P. McNeely, Blaine G. Lecesne, Deputy City Attys., Galen S. Brown, M. Lizabeth Talbott, Robert E. Arceneaux, Barham & Churchill, P.C., New Orleans, for defendant-relator, Paul C. Mitchell, Jr., Director of Finance for the City of New Orleans.

Bertrand F. Artigues, Peggy Wallace, Coleman, Dutrey & Thompson, New Orleans, for plaintiff respondents Bevpac Properties, et al.

Mitchell W. Herzog, Donald A. Meyer, Betty F. Mullin, Shushan, Meyer, Jackson, McPherson & Herzog, New Orleans, for Westminster Management Corp., plaintiff-respondent.

Moise S. Steeg, Jr., Robert M. Steeg, Steeg & O'Connor, New Orleans, for other Westminster plaintiffs and Pan-Am plaintiffs.

Before BYRNES, CIACCIO and WARD, JJ.

CIACCIO, Judge.

In this matter four separate law suits are consolidated. Plaintiffs are owners of real property in the First Assessment District of Orleans Parish. Defendant is Paul C. Mitchell, Jr. in his capacity as Director of Finance for New Orleans. Plaintiffs seek recovery of ad valorem taxes paid under protest.

We granted certiorari to review the district court judgment denying defendant's motion for summary judgment. Although a motion for summary judgment should address the substantive merits of an action, the parties have not addressed the substantive merits of this action, but have argued before the district court and this court procedural exceptions to the plaintiffs' petitions. Looking past the name and form of the pleadings, we consider their content and address the objections raised by the procedural exceptions to plaintiffs' petitions.

We find that plaintiffs failed to file their petitions timely. We hold that plaintiffs' actions have prescribed and that defendant's exception of prescription should be maintained. We, therefore, set aside the judgment of the district court and enter judgment maintaining defendant's excep-

tion of prescription and dismissing plaintiffs' suits.[1]

Plaintiffs sue the City's finance director for relief from a scheme of ad valorem tax assessment which they perceive to be nonuniform and unequal. Plaintiffs clothe their complaint in language challenging the constitutionality of Louisiana Revised Statutes Title 47 as applied to real estate taxation. They base their challenge on a claim that New Orleans is unique within the State's statutory framework for ad valorem taxation: New Orleans, plaintiffs argue, is the State's only political subdivision divided into multiple tax districts. La.R.S. 47:1901.[2]

In Orleans Parish there are seven tax assessors, one from each municipal district. La.R.S. 47:1901. The seven assessors constitute a board of assessors for the parish. La.R.S. 47:1909. Each asessor, however, independently exercises his functions in assessing and listing property in his district. La.R.S. 47:1909.

Plaintiffs complain that their property in the First Assessment District is not assessed on a uniform and equal basis relative to the assessment of property in the other six assessment districts. They claim that their property is assessed properly proportionate to fair market value, but

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[1] Defendant's responsive pleadings are not identical as to each plaintiff. Each plaintiff, however, has responded to defendant's procedural objections, particularly the prescription issue on which we decide this matter. We find that no plaintiff is prejudiced if we consider defendant's exceptions to have been filed as to each plaintiff, and discern no useful purpose in reconstructing here the procedural confusion created in the district court. The district court treated all plaintiffs as one, and the defendant's responses as applying to all; so do we.

[2] La.R.S. 47:1901, as amended in 1970, divides into multiple (at least 3) tax districts parishes geographically divided by the Mississippi River and having a population of over 200,000. That New Orleans may not be unique, however, ultimately is not analytically germane to this case.

that similar classes of property in the other assessment districts are assessed improperly because the assessments are proportionate to valuations which are below fair market value. Plaintiffs argue that this scheme violates La. Const. Art, 7, Sec. 18, which as to assessments (paragraph (A)), use value (paragraph (C)), and valuation (paragraph (D)), requires. The percentage of fair market value shall be uniform throughout the State upon the same class of property." and "Fair market value and use value of property shall be determined in accordance with criteria which shall be established by law and which shall apply uniformly throughout the State."

[1] La. Const. Art. 7, Sec. 18, also establishes the procedure for review of the correctness of assessments:

> (E) Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

Plaintiffs and defendant disagree as to which "procedures established by law" apply in this case. Plaintiffs have proceeded under La.R.S. 47:2110 which allows for filing suit within thirty days after payment under protest of the tax due. Defendant argues that in this case plaintiffs must proceed under La.R.S. 47:1998 which allows for filing suit within thirty days of the decision of the tax commission.

To a taxpayer challenging "the correctness of [his] assessment," the availability of judicial review after exhausting the administrative procedures mandated by La. Const. Art. 7, Sec. 18 is provided for in La.R.S. 47:1998. On the other hand, La.R.S. 47:2110 permits a taxpayer to

bring an action directly to the district court if he is challenging "the legality of any tax accrued or accruing or the method of enforcement thereof." Because the Constitution mandates the procedures for "correctness" challenges, La.R.S. 47:2110, to the extent its direct action provisions conflict with the Constitution, must apply only to non-correctness challenges. *Lowery, Chevrolet, Inc., v. Brumley,* 510 So.2d 1294 (La.App. 3d Cir. 1987), writ denied, 514 So.2d 20 (La. 1987); *Capital Drilling Company v. Graves,* 496 So.2d 487 (La.App. 1st Cir. 1986).

[2] Thus, the pivotal issue is whether plaintiffs' challenge is for "correctness." Plaintiffs do not challenge the right of the State or any of its political subdivisions to obtain revenue by way of ad valorem taxation. Plaintiffs do not question the methods of enforcement of ad valorem taxes. Plaintiffs complain that their assessments are unequal and not uniform relative to assessments of similar classes of property in adjacent assessment districts. Plaintiffs' complaint is a "correctness" challenge.

[3] Plaintiffs argue that they are not challenging correctness—their assessments are correct, other assessments are incorrect, too low. Plaintiffs argue that their challenge is of constitutional magnitude resulting from inequality and non-uniformity, invoking the due process and equal protection clauses of the state and federal constitutions. We make no argument with plaintiffs' foundational principle that "if both the standard of true value and the uniformity and equality required by law cannot be achieved, equality and uniformity is preferred under the law." *Sioux City Bridge Company v. Dakota County, Neb.,* 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); *Probst v. City of New Orleans,* 337 So.2d 1081 (La.1976); *Bussie v. Long,* 286 So.2d 689 (La.App. 1st Cir.1973), writ denied, 288 So.2d 354 (La.1974). We find, however that plaintiffs

incorrectly construe this and other "constitutional" principles to argue that their challenge is not for "correctness." "Correctness" includes both the standard of true value and the uniformity and equality required by law. The achievement of both is the goal, the absence of either creates incorrectness. That uniformity and equality are given higher priority than true value does not make an attack on the former rather than the latter something other than a challenge for "correctness."

We do not find significant distinction between this case and *Lowrey Chevrolet, Inc. v. Brumley,* above. Lowrey Chevrolet paid its taxes under protest, and under La.R.S. 47:2110 brought suit challenging the non-uniformity and inequality of the assessment on its inventory relative to assessments on similar classes of property in other tax districts (parishes) in the State. The court found that Lowrey Chevrolet's challenge was for "correctness", and that Lowrey Chevrolet was obligated to proceed under the administrative procedures mandated by La. Const. Art. 7, Sec. 18, and the procedure for judicial review provided in La.R.S. 47:1998. Plaintiffs argue that comparing assessment districts within Orleans Parish is different than comparing tax districts within the State because the millage rate within Orleans Parish is necessarily constant whereas the millage rates between other State tax districts may be, and most often are different. This distinction is not significant because the applicable millage rate is immaterial to a discussion of the correctness of the assessment; and what plaintiffs are challenging is the correctness of their assessments relative to assessments of similar classes of property in adjacent assessment districts, regardless of the applicable millage rate.

Having found that plaintiffs challenge the correctness of their assessments, we also conclude that they are

obliged to follow the procedures mandated by La. Const. Art. 7 Sec. 18 and provided for in La.R.S. 47:1998. That is, the correctness of assessments by the assessor must be reviewed first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with the procedures established by law for judicial review is in La.R.S. 47:1998, which requires filing suit within thirty days of the decision of the tax commission.

Some plaintiffs did not seek administrative review, and the time for doing so has past. The other plaintiffs obtained review first by the parish governing authority and then by the Louisiana Tax Commission, but did not file suit within thirty days of the decision of the tax commission. The time for seeking administrative review or judicial review had past as to all plaintiffs prior to the filing of the petition in any of these four consolidated cases.[3]

We hold, therefore, that plaintiffs' suits have prescribed and should be dismissed. We set aside the judgment of the district court and enter judgment maintaining an exception of prescription. Plaintiffs' suits are dismissed. "Plaintiffs shall pay all costs of these proceedings.

JUDGMENT SET ASIDE, PEREMPTORY EXCEPTION OF PRESCRIPTION MAINTAINED: SUITS DISMISSED.

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3. Whether the elapsed time periods involved here are peremptive or prescriptive need not be resolved in this case, either objection can be raised by the peremptory exception of prescription. *Capital Drilling Co. v. Graves*, 496 So.2d at 490.

ON PLAINTIFFS' APPLICATION FOR REHEARING

Plaintiffs correctly point out that the 1970 amendment to La.R.S. 47:1901, see La.Acts 1970 No. 155, Section 1, referred to in footnote 2 of our original opinion, was declared unconstitutional in *Chehardy v. Democratic Executive Committee for the Parish of Jefferson,* 259 La. 45, 249 So.2d 196 (1971). Plaintiffs do not argue that this point affects the substance or result of the opinion, for it does not. The illustrative purpose of the notation remains, as does its substantive comment that any uniqueness of multiple assessors for Orleans Parish is not important to resolution of the issues raised in this appeal.

With this comment of clarification, we deny the application for rehearing.

APPENDIX E

THE SUPREME COURT OF THE STATE OF LOUISIANA

WESTMINISTER MANAGEMENT CORPORATION, et al
VERSUS
PAUL C. MITCHELL, JR., DIRECTOR OF
FINANCE OF THE CITY OF NEW ORLEANS

C/W

PAN-AMERICAN LIFE INSURANCE COMPANY
VERSUS
CITY OF NEW ORLEANS, et al

C/W

PANACON, A LOUISIANA PARTNERSHIP

VS. NO. 88-CC- 1713

CITY OF NEW ORLEANS, et al

C/W

BEVPAC PROPERTIES
VERSUS
PAUL C. MITCHELL, JR., DIRECTOR OF
FINANCE FOR THE CITY OF NEW ORLEANS

- - - - - -

IN RE: Westminster Management; LePavillon Hotel; Bilbe, Jerry C.; Bellarie, Sheila B.; Bilbe, Kathleen M.; Bilbe, Mary D.; Stedman Management Co. Inc.; Regent York Inc.; New Orleans Diamond/Jew.Whole.; Turngemeinde Prtn. in Commendam; Hartwig Moss Ins. Agency Ltd.; W. R. Zanes & Co./LA Inc.; Zanes, W. R. & Co./LA

Inc.; Bernos Investment Corp.; Six-O-One Julia Corp.; 601 Julia Corp.; T. D. Bickham Corp.; Bickham, T.D. Corp.; Aitkens Realty Co. Inc.; Lupo, Thomas J. Enterprises; Thomas J. Lupo Enterprises; New Orleans Rivercenter; International Rivercenter; Garon and Brener; Lovell, John C. Jr.; Kronlage, Charles A. Jr.; J. A. Hoerner Co. Inc.; Hoerner, J. A. Co. Inc.; Ber. James M.; Delta Theatres Inc.; Church, Thomas D.; National Meat and Provision Co; Green, A. T. Jr.; Odeco Bldg. Corp.; 210 Baronne St. Limited Prtn.; Lincoln Property Co. C.S. E. Inc.; Canarles Realty Corp.; Huger, Killian L. Jr.; Dixie Art Supplies Inc.; Place St. Charles/LA Prtn.; Grand Lodge/State of LA; Canizaro, Joseph C. Interests; Cliff Probst Inc.; Probst, Cliff Inc.; Watkins, Eben T.; FNBC Trustee; Pan-American Life Ins. Co.; Applying for Writ of Certiorari and/or Review, Prohibition, Mandamus, Supervisory and/or Remedial Writs; to the Court of Appeal, Fourth Circuit, Number 88-CW-0516; Parish of Orleans Civil District Court Div. "G" Number 87-3697, 87-3727, 87-3728, 87-3898

- - - - - -

October 14, 1988

Denied.

JCW
JAD
JLD
HTL — CALOGERO, J., would grant the writ.
LFC — MARCUS, J., recused.

Supreme Court of Louisiana
October 14, 1988

/s/ Frans J. Labranche, Jr.

Clerk of Court
For the Court

APPENDIX F

LOWREY CHEVROLET, INC.,
Plaintiff-Appellant,

v.

James A. BRUMLEY, Jr., in his Capacity as Sheriff and Ex Officio Tax Collector for Sabine Parish, Louisiana, Defendant-Appellee.

No. 85-1045.

Court of Appeal of Louisiana,
Third Circuit.

June 26, 1987.

Taxpayer brought suit seeking return of ad valorem taxes paid under protest. The Eleventh Judicial District Court, Parish of Sabine, John S. Pickett, Jr., J., sustained exceptions of prematurity, prescription and no cause of action, and taxpayer appealed. The Court of Appeal, Domengeaux, J., held that taxpayer's suit challenged correctness of its assessment and thus taxpayer was obligated to seek administrative review prior to requesting judicial relief.

Affirmed.

Neil Erwin, Shreveport, for plaintiff-appellant.

James L. Davis, Many, Thomas S. Halligan, Robert H. Abbott, III, Baton Rouge, Kenneth N. Simmons, Many, for defendant-appellee.

Before DOMENGEAUX, LABORDE and YELVERTON, JJ.

DOMENGEAUX, Judge.

This opinion will address the issues presented for review in the cases entitled: *Lowrey Chevrolet, Inc. v. James A. Brumley, Jr., in his capacity as Sheriff and Ex Officio Tax Collector for Sabine Parish, Louisiana,* and *Lowrey Chevrolet, Inc. v. Dean Lambert, in his capacity as Chief of Police and Ex Officio Tax Collector for the Town of Many, Louisiana, and the Town of Many, Louisiana,* numbered by our Clerk 85-1045 and 85-1046, respectively. The trial court, although these cases were consolidated prior to trial, chose to render separate judgments. We will, for the reasons hereinafter set forth, decide all issues in this opinion but, for the purposes of convenience and consistency will render a separate decree in the matter entitled: *Lowrey Chevrolet, Inc. v. Dean Lambert, in his capacity as Chief of Police and Ex Officio Tax Collector for the Town of Many, Louisiana, and the Town of Many, Louisiana,* numbered, 85-1046, 510 So.2d 1299.

Lowrey Chevrolet, Inc. (Lowrey Chevrolet), an automobile and truck dealership in the Town of Many, in Sabaine Parish, Louisiana, brought suit against the Sheriff and Ex Officio Tax Collector of Sabine Parish, James A. Brumley, Jr. (Brumley). Lowrey Chevrolet sought from Brumley the return of $45,441.44 in ad valorem taxes paid under protest for the year 1984, together with interest at the rate of two percent per annum, pursuant to La.R.S. 47:2110.

Lowrey Chevrolet, in a companion case consolidated with the *Brumley* suit, brought suit against the Chief of Police and Ex-Officio Tax Collector for the Town of Many,

Dean Lambert, and the Town of Many, Louisiana, (both hereinafter referred to as Lambert). The plaintiff's suit against Lambert sought the return of $3,534.40 in ad valorem taxes paid under protest for the year 1984, together with interest at the rate of two percent per annum.

Lowery Chevrolet, additionally, sought in both the *Brumley* and *Lambert* suits, judgments relieving it of the obligation of paying future ad valorem taxes. The plaintiff challenged the collection of the ad valorem taxes alleging that the assessment of similar classes of property throughout the state did not comply with La.Const. art. VII § 18. Article VII § 18 requires that similar classes of property, in this case new and used automobiles and trucks, be uniformly valued. Lowery Chevrolet reasoned that because its inventory was valued higher than the inventory of other automobile and truck dealerships in Louisiana it was paying proportionately higher ad valorem taxes.

Brumley answered Lowrey Chevrolet's petition and in the same pleading filed a third-party demand. Brumley's answer denied liability stating that as sheriff and ex officio tax collector he was not responsible for assessing property or fixing millage rates. Brumley's third-party demand named the Sabine Parish Tax Assessor, Conrad Cathey, and the Louisiana Tax Commission as third-party defendants. The third-party plaintiff's demand alleged that Cathey and the Louisiana Tax Commission were the proper parties to respond to the plaintiff's suit.

Cathey, without answering the third-party demand, excepted to the right of the third-party plaintiff, Brumley, to proceed. The assessor sought to have Brumley's third-party demand dismissed on the grounds that it failed to state a cause of action and was vague.

The Louisiana Tax Commission excepted to the right of the plaintiff to proceed and, in the same filing, excepted to the third-party demand of Brumley. The Commission argued that since the third-party demand was interrelated with the main demand it was susceptible to the same exceptions as the main demand. The Commission challenged the right of Lowrey Chevrolet and Brumley to proceed on the grounds that: (1) the district court lacked jurisdiction over the subject matter; (2) the main demand and the third-party demand were premature; (3) the main demand and the third-party demand were prescribed and, for the same reasons, were perempted; and (4) neither the main demand nor the third-party demand stated a cause of action.

Lambert, in the companion case and without answering, also excepted to the action of Lowrey Chevrolet. Lambert sought the dismissal of the plaintiff's petition on the grounds that: (1) the plaintiff had failed to join an indispensable and/or necessary party; and (2) the plaintiff's petition failed to state a cause of action.

The Louisiana Attorney General, although not named as a defendant, in either the *Brumley* or *Lambert* suits, was served in both pursuant to La.Code Civ.Proc. art. 1880. Article 1880 provides that when a "statute, ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall be served with a copy of the proceeding and be entitled to be heard."

The Attorney General, subsequent to being served, excepted to the right of the plaintiff to proceed in both cases. The Attorney General's exceptions in both *Brumley* and *Lambert* were identical to those filed by the Louisiana Tax Commission. The Attorney General sought to have both suits dismissed on the grounds that: (1) the district court lacked jurisdiction over the subject matter; (2) both

suits had been filed prematurely; (3) both actions had prescribed and, for the same reasons, were perempted; and (4) neither petition stated a cause of action.

The trial court in *Brumley* sustained the Attorney General and Louisiana Tax Commission's exceptions of prematurity, prescription and no cause of action. The trial court also sustained the exception of no cause of action filed by the Sabine Parish Tax Assessor, Cathey. Lowrey Chevrolet's suit was thereafter dismissed at its costs and the remaining exceptions were declared moot.

The trial court in *Lambert* sustained the Attorney General's exception of lack of jurisdiction over the subject matter and also sustained the exceptions of prematurity, prescription and no cause of action filed by the Attorney General, the Chief of Police and Ex Officio Tax Collector of the Town of Many, Dean Lambert, and the Town of Many. The court then dismissed the plaintiff's suit at the plaintiff's cost.

The trial court, in agreement with the arguments presented by the Attorney General and the Louisiana Tax Commission, adopted the memoranda of authority submitted by both parties as its reasons for judgment. The conclusions in the memoranda rest entirely upon La. Const. art. VII § 18(E). Article VII § 18(E) provides.

> Review. The correctness of assessments by the assessor shall be subject to review first by the parish governing authority, then by the Louisiana Tax Commission or its successor, and finally by the courts, all in accordance with procedures established by law.

The memoranda argue that Lowrey Chevrolet's peti-

tions were premature because the plaintiff did not comply with the dictates of Article VII § 18(E). the authors of the memoranda interpret the Constitution to require that taxpayers questioning the correctness of their assessments exhaust all administrative remedies prior to seeking judicial relief. The memoranda conclude that because the plaintiff did not seek a review of its assessment, at the local and then at the state level, it was not yet entitled to judicial review.

The memoranda, in addressing the appropriateness of sustaining the exceptions of prescription, conclude that because Lowrey Chevrolet failed to comply with Article VII § 18(E) and its implementing legislation, La.R.S. 47:1931, 1932, 1989 and 1998, within the time periods announced in the statute the plaintiff's right to seek administrative review had expired. A review of Title 47 Sections 1931, 1992, 1989 and 1998, reveals that when the plaintiff filed its suits, the opportunity to seek administrative review had passed.

The memoranda also relied upon Article Vii § 18(E) in supporting the exceptions of no cause of action. The Attorney General and the Louisiana Tax Commission both concluded that essential to Lowrey Chevrolet's causes of action was the unsatisfactory exhaustion of administrative relief. Since Lowrey Chevrolet failed to seek administrative relief, or at least failed to allege the exhaustion of administrative relief, the memoranda conclude, it failed to state a cause of action.

Lastly, and with reference only to the *Lambert,* suit, the Attorney General argued in his memorandum that the district court lacked jurisdiction over the subject matter because the plaintiff failed to seek administrative relief prior to petitioning the court. The Attorney General took

the position that the Constitution mandates that taxpayers challenging the correctness of their assessment first attempt to secure administrative relief and then proceed to the courts. The memorandum concludes that because the administrative requirements of Article VII § 18(E) were not complied with prior to suit the district court was without authority to hear the case.

Lowrey Chevrolet brought this appeal raising three assignments of error: (1) the trial court erred in dismissing Lowrey Chevrolet's suits for failing to comply with La. Const. art. VII § 18(E) and the administrative provisions which implement the Constitution; (2) the trial court erred in permitting the Louisiana Attorney General to participate in the suits as a party, particularly sanctioning the right of the Attorney General to except to the plaintiff's petitions; and (3) the trial court erred in sustaining an exception of no cause of action filed by Lambert on the grounds that neither Lambert nor the Town of Many were necessary parties.

The district court sustained the exceptions filed against Lowrey Chevrolet concluding that the administrative procedures mandated by Article VII § 18(E) had not been followed. Lowrey Chevrolet contends that it was not obligated to comply with the administrative review requirements because it was not proceeding under Article VII § 18, but rather, was seeking relief pursuant to La.R.S. 47:2110. Lowrey Chevrolet ultimately argues that it was not obligated to comply with Article VII § 18 because it was not challenging the correctness of its assessment and because R.S. 47:2110(D) provides the means for a direct appeal to the district court. We disagree.

[1] Article VII § 18 mandates that certain administrative procedures be followed when a taxpayer ques-

tions the "correctness of [his] assessment." R.S. 47:2110 provides, on the other hand, that a taxpayer may bring an action directly to the district court if he is challenging the "legality of any tax accrued or accruing or the method of enforcement thereof." The question is, therefore, was Lowrey Chevrolet challenging the correctness of its assessment or the legality or method of enforcement of ad valorem taxes.

We believe that the plaintiff's suits sought to correct an incorrect assessment Lowrey Chevrolet was not challenging the right to the State to obtain revenue by way of ad valorem taxation, nor was the plaintiff questioning the methods by which ad valorem taxes are enforced. We, therefore, conclude that pursuant to Article VII § 18(E) Lowrey Chevrolet was obligated to seek administrative review prior to requesting judical relief.

[2] Lowrey Chevrolet also argues that R.S. 47:2110(D) provides taxpayers contesting the correctness of their assessments with the means of directly appealing their assignments to district court. R.S. 47:2110(D) provides,

> The right of action provided in this section shall be in addition to any rights elsewhere provided in this Sub-title, including R.S. 47:1998, affording taxpayers an opportunity to test the legality or *correctness of their assessments* or ad valoreum taxes paid under protest before the courts of state. (Emphisis added).

The "right of action" referenced above is the right to challenge an assessment directly in district court.

Absent from the appellant's argument, however, is the fact that R.S. 47:2110(D) was enacted in 1970 and is, to the extent relevant to this case, in conflict with Article VII § 18(E) of our constitution of 1974. Pursuant to the express language of La. Const. art. XIV § 18(B), laws which were in conflict with the Constitution on its effective date are demed to have been superceded. R.S. 47:2110(D), to the extent it grants taxpayers questioning the correctness of their asssessments the right of appealing their assessments directly to district court, is in conflict with Article VII § 18(E) and has, therefore, been superceded.

Lowrey Chevroley further suggests that *Rickey Tri-Key Partnership v. Supleix,* 462 So.2d 235 (La.App. 3rd Cir. 1984), *writ denied,* 464 SO.2d 1384 (La.1985) supports its right of direct appeal. Subsequent to a review of the facts and issues in both *Rickey* and the instant case, we must reject the appellant's argument.

Lowrey Chevroley contends that the following language in *Rickey,* albeit dictum, supports its position,

> La.R.S. 47:2110(A) provides a direct legal action against the collecting entity with no appearances before administrative boards or agencies.... [This] same statute, in section 2110(D), clearly provides that the direct action afforded in subsection (A) is in addition to the administrative remedies afforded elsewhere in title 47. *Id.* at 237.

Although the referenced statement does lend support to the appellant's argument, we must decline to follow it because of the dissimilarity between *Rickey* and the instant case.

In *Rickey,* the taxpayer sought to challenge the correctness of its assessment by appealing that assessment

first to the local governing authority and then to the Louisiana Tax Commission. The taxpayer only brought suit in district court subsequent to the unsatisfactory exhaustion of its administrative remedies.

The appellee in *Rickey*, upon the taxpayer's appeal to the district court, filed a peremptory exception of prescription against Rickey contending that Rickey had failed to bring suit within thirty days of paying its taxes under protest, as required by R.S. 47:2110. Factually, the appellee was correct. During Rickey's appeal before the Louisiana Tax Commission its tax obligation became due. Rickey, in compliance with the law, paid its taxes but, paid them under protest. Rickey's suit, although filed within thirty days of the tax commission's decision, was not brought within thirty days of paying its taxes.

The district court dismissed Rickey's suit concluding that the taxpayer had lost the right to appeal its assessment to the district court because it had not brought suit within thirty days of paying its taxes under protest. On appeal we reversed concluding that Rickey had properly complied with the administrative review procedures and that its suit was timely pursuant to R.S. 47:1998. R.S. 47:1998(A), as stated in *Rickey*, "expressly [grave] the appellant the right to contest an adverse decision of the tax commission in the district court within thirtydays of that decision." *Rickey supra* at 236.

In the instant case Lowrey Chevrolet proceeded directly to district court, bypassing administrative review, and the issue which now confronts us, unlike *Rickey*, is one of constitutional magnitude. Reiterating our earlier conclusion, we must decline to follow the dictum in *Rickey* because the cases are factually distinguishable and because we were not called upon in *Rickey* to resolve the constitu-

tional question which now appears before the bar of our Court.

Lowrey Chevrolet's second assignment of error questions the propriety of the district court ruling sustaining the exceptions filed by the Louisiana Attorney General. Lowrey Chevrolet contends that Code Civ. Proc. art. 1880 does not grant the Attorney General the right to intervene on behalf of the State as a party in its lawsuits. Article 1880 provides, in part.

> If a statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled *to be heard.* (Emphasis added).

Although we disagree with the contention of the plaintiff, because we have previously affirmed the dismissal of Lowrey Chevrolet's petitions based upon exceptions filed by other parties, we need not address this assignment of error.

Having previously concluded that the trial court correctly dismissed the plaintiff's suits we need not address its final assignment of error questioning. as interpreted by the plaintiff, the trial court's decision to dismiss Lambert and the Town of Many on an exception of no cause of action because they were not necessary parties. We must, however, state that our review of the record does not reveal that the exception of no cause of action was sustained on the grounds alleged by the plaintiff. Our review of the judgment and memorandum of authority, adopted by the court as its reasons, indicates that the exception of no cause of action was sustained because administrative review, a prerequiste to judicial review, was not sought.

For the above and foregoing reasons the judgment of the district court in favor of James A. Brumley, Jr., in his capacity as Sheriff and Ex Officio Tax Collector for Sabine Parish, Louisiana, the defendant-appellee, is affirmed.

All costs of this appeal are assessed against Lowrey Chevrolet, Inc., the plaintiff-appellant.

AFFIRMED.

A-63

LOWREY CHEVROLET, INC.,
Plaintiff-Appellant,

v.

Dean LAMBERT, in his Capacity as Chief of Police and Ex Officio Tax Collector for the Town of Many, Louisiana, and the Town of Many, Louisiana, Defendants-Appellees.

No. 85-1046

Court of Appeal of Louisiana,
Third Circuit.

June 26, 1987.

Appeal from 11th Judicial DIstrict Court, Parish of Sabine; John S. Pickett, Jr., Judge.

Neil Erwin, Shreveport, for plaintiff-appellant.

James L. Davis, Kenneth N. Simmons, Many, Thomas S. Halligan, Robert H. Abbott, Baton Rouge, for defendants-appellees.

Before DOMENGEAUX, LABORDE and YELVERTON, JJ.

DOMENGEAUX, Judge.

For the reasons set forth in the matter entitled *Lowrey Chevrolet, Inc., v. James A. Brumley, Jr., in his capacity as Sheriff and Ex Officio Tax Collector for Sabine Parish, Louisiana,* 510 So.2d 1294, numbered 85-1045, in which a separate decision is being rendered this day, the

judgment of the district court in favor of Dean Lambert, in his capacity as Chief of Police and Ex Officio Tax Collector for the Town of Many, Louisiana, and the Town of Many, Louisiana, the defendant-appellees, is affirmed.

All costs of this appeal are assessed against Lowrey Chevrolet, Inc., the plaintiff-appellant.

AFFIRMED.